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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/622,147	10/30/2000	Mohammed Javed Absar	851663414USP	8294

7590 09/05/2006

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EXAMINER

FLANDERS, ANDREW C

ART UNIT	PAPER NUMBER
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2615

DATE MAILED: 09/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/622,147

Applicant(s)

ABSAR ET AL.

Examiner

Andrew C. Flanders

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-6,9-20,23-34 and 36-66 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-6,9-20,23-34 and 36-66 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Response to Arguments

Applicant's arguments, see the arguments regarding the rejections under U.S.C. 103, filed 21 June 2006, with respect to the claims have been fully considered and are persuasive. The rejection of the claims under U.S.C. 103 has been withdrawn.

Applicant's arguments filed 21 June 2006 with regards to the rejections under U.S.C. 101 have been fully considered but they are not persuasive.

Applicant alleges that the claims have been amended to include all of the claims are implemented in an "audio encoder or audio data encoder. However, this cannot overcome the rejection of the claims as being non-statutory for two reasons. First, even though the methods appear to claim structure of a seemingly tangible device (i.e. the audio data encoder) the claim when considered as a whole does not claim the details and structure of audio data encoder or a method of how the actual components of the audio data encoder but merely a method of calculation and encoding separate of the audio data encoder. Secondly, it is submitted that the audio data encoder in the present invention is not an actual tangible hardware system. The audio encoder as disclosed in Fig. 2 does not disclose actual discrete hardware components but merely a functional block diagram of the encoding method. Thus, no tangible device is actually disclosed.

Applicant further alleges that the claims clearly recite a transformation of the audio data. It is agreed by the Examiner that the claims are directed toward a transformation of audio data, however, that in itself does not satisfy the interim guidelines requirements for a transformation. The guidelines recite that the invention transforms *an article or physical object* into a different state or thing. Digital Audio data is not an article or physical object for the purpose of transformation. It is merely a data representation without actual physical structure.

Applicant further alleges that the results produce a useful data set for coding or encoding audio data in a different form in the encoder. While the claims do provide this feature, it is not a useful, concrete and tangible result. It is merely the result of the process.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1, 2, 4 – 6, 9 – 20, 23 – 34, 36 – 66 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

To contain statutory subject matter a claim must satisfy section 101 requirements; i.e. the claim must be for a practical application of the § 101 judicial exception, which can be identified in various ways:

1. The claimed invention "transforms" an article or physical object to a different state or thing.
2. The claimed invention otherwise produces a useful, concrete and tangible result, based on the factors discussed below.

It is submitted that the claimed invention in the independent claims do not transform an article or physical object to a different state or thing. The claims also do not produce a useful, concrete and tangible result. The claims merely appear to calculate exponents and choose a coding strategy accordingly. No coding is taking place and no output appears to be produced.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew C. Flanders whose telephone number is (571) 272-7516. The examiner can normally be reached on M-F 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh Tran can be reached on (571) 272-7546. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

acf


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SUPERVISORY PATENT EXAMINER